

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

JOHN PRICE

PLAINTIFF

VS.

CIVIL ACTION NO. 5:08-cv-16(DCB)(JMR)

JANET DAIGRE, ET AL.

DEFENDANTS

ORDER

This cause is before the Court on the Report and Recommendation (**docket entry 3**) of Chief Magistrate Judge John M. Roper, and on the plaintiff's objection thereto. Having carefully considered same, and being fully advised in the premises, the Court finds as follows:

On November 10, 2008, Magistrate Judge Roper issued his report and recommendation, addressing sua sponte the plaintiff's failure to prosecute his case and failure to respond to the show cause order of July 17, 2008. The plaintiff's complaint was filed on February 5, 2008. Summons was issued on February 5, 2008, but never executed. The report and recommendation concludes that this case should be dismissed sua sponte for failure to prosecute.

On December 1, 2008, the plaintiff filed his objection, stating that his original counsel withdrew shortly after this case was filed to work for the Madison County District Attorney's Office, and that due to a misunderstanding a period of time passed before another attorney was alerted to the matter. The objection also contains a motion for extension of time to serve the summons

and complaint.

In light of the matters set forth in the plaintiff's objection, the Court finds that the report and recommendation should not be adopted, and that this action should be referred to the magistrate judge for further proceedings. Accordingly,

IT IS HEREBY ORDERED that the plaintiff's objection is well taken, that the Report and Recommendation (**docket entry 3**) of Chief Magistrate Judge John M. Roper is not adopted by the Court, and this action is referred to the magistrate judge for further proceedings.

SO ORDERED, this the 16th day of December, 2008.

/s/ David Bramlette  
UNITED STATES DISTRICT JUDGE